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In The

SUPREME COURT of the UNITED STATES

October Term, 1973

No. 73-568

WILBUR SCHMIDT, et al.,

Appellants,

vs.

ALBERTA LESSARD, et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

MOTION TO DISMISS OR AFFIRM

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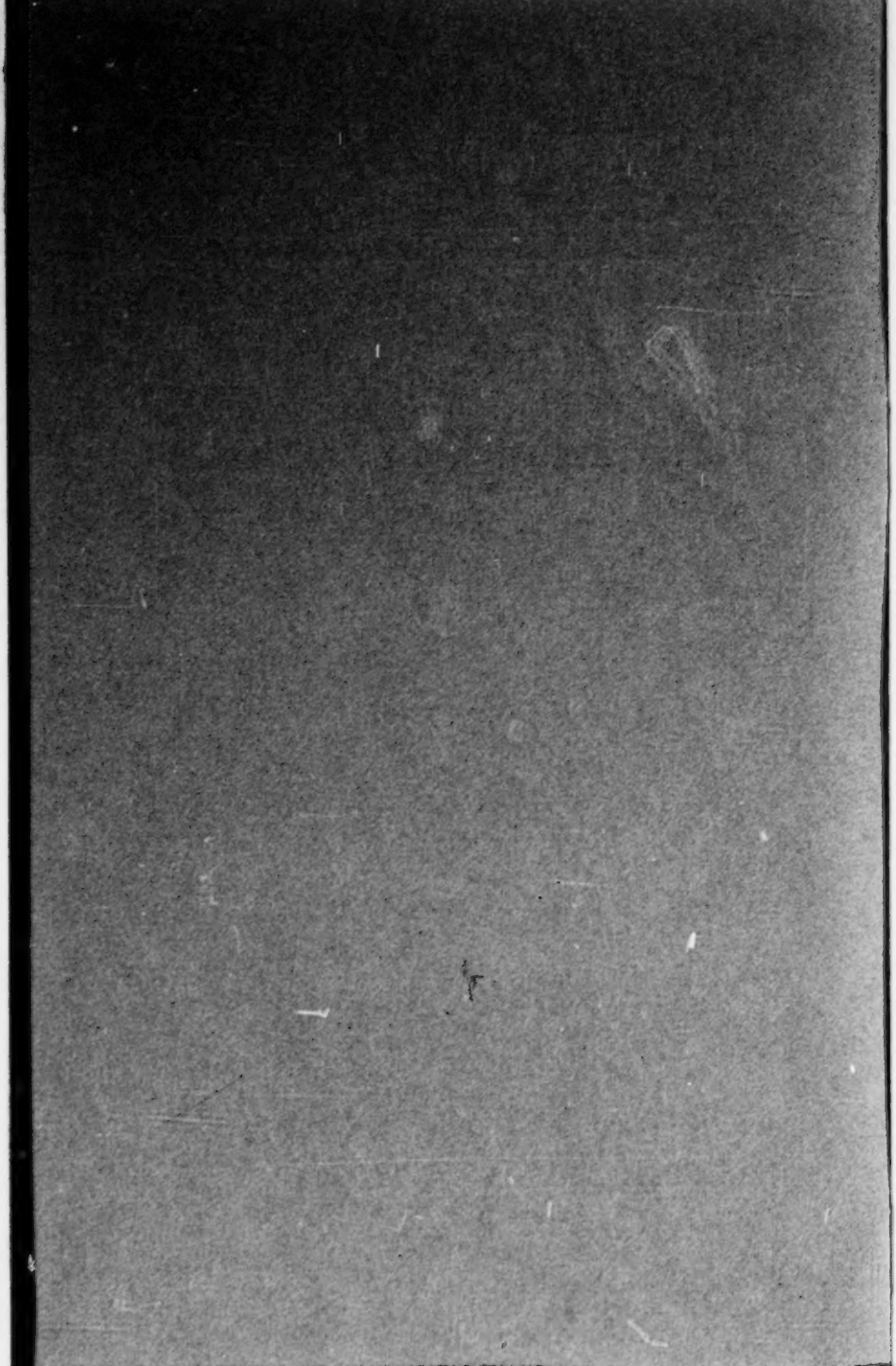

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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MOTION TO DISMISS OR AFFIRM

JURISDICTION

This case is before this Court on an appeal from a judgment of a three-judge District Court for the Eastern District of Wisconsin. Judgment was entered June 29, 1973. Appellees assert that jurisdiction is not conferred upon this Court by 28 U. S. C. § 1253 for reasons more fully set forth in the Argument to this Motion.

STATUTES INVOLVED

"Title 28 U. S. C. § 1253. Direct appeals from decisions of three-judge courts.

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

QUESTIONS PRESENTED

I. Was injunctive relief granted by the three-judge Court below, at any time, as required by Title 28 U. S. C. § 1253 to form the requisite basis for a direct appeal to this court?

II. Do the Appellants present any substantial question by challenging the three following conclusions of the lower Court:

A. That the Wisconsin Statutory scheme providing for pick-up, detention and involuntary commitment of the allegedly mentally ill violates the Due Process Clause;

B. That abstention under the circumstances presented to the lower court was not appropriate; and

C. That the cause was a proper one for class relief.

STATEMENT OF THE CASE

This case was presented to the three-judge Court on a Stipulation of Facts, Stipulation of Legal Issues and Exhibits (Record of Proceedings, Numbers 16, 17, and 19). Although the factual basis of this action is set forth in the Opinion of the Court below, we will briefly discuss the facts.

Miss Lessard was picked up in front of her residence and transported to the Milwaukee County Mental Health Center by two West Allis police officers on October 29, 1971. On Monday, November 1, 1971, defendant police officers appeared ex parte before Judge Seraphim. On the basis of this appearance, Judge Seraphim ordered further detention for ten days of Appellee Lessard. Miss Lessard had no notice or knowledge of this judicial conference.

On November 12, 1971, Appellee, who remained in involuntary custody, brought suit in the United States District Court for the Eastern District of Wisconsin on behalf of herself and others similarly situated. The action was brought pursuant to Title 42 U. S. C. § 1983 and Title 28 U. S. C. §§ 2201 and 2202. Jurisdiction was invoked pursuant to Title 28 U. S. C. §§ 1343(3) and 1343(4). Appellees sought declaratory and injunctive relief against the Wisconsin Statutory scheme providing for involuntary civil commitment, challenging said scheme as violative of the Due Process Clause. A hearing was scheduled for November 16, 1971. On November 15, 1971, at 2:00 P.M., Miss Lessard received notification that a "mental inquiry" hearing was to be held in the Milwaukee County Court the following day at 8:30 A.M. On November 16, 1971, a hearing was held before the Federal District Court for the

Eastern District of Wisconsin wherein a motion for injunctive relief was denied but a motion impaneling a three-judge court was granted.

On October 18, 1972, the three-judge Court, after arguments and briefs, issued a unanimous opinion declaring unconstitutional the Wisconsin Statutory scheme for involuntary commitment of the allegedly mentally ill. On approximately March 15, 1973, Appellees sent to the District Court a proposed ORDER AND JUDGMENT.[1] The Judgment of the Court, entered June 29, 1973, reads as follows:

> "It is Ordered and Adjudged that judgment be and hereby is entered in accordance with the Opinion heretofore entered on October 18, 1972." Appellants' Jurisdictional Statement, p. 149.

On July 18, 1973, Appellees, joined by Appellants, filed a motion with the Court below, entitled MOTION TO RECONVENE FOR CLARIFICATION OF OPINION. Appendix, pp. 5-10.

Appellants' Notice of Appeal, asserting 28 U. S. C. § 1253 as conferring jurisdiction, was filed July 30, 1973, and Appellants' Jurisdictional Statement[2] asserting 28 U. S. C. §§ 1253 and 2101(b) as conferring jurisdiction was docketed September 28, 1973. At no time, either prior or subsequent to July 30, 1973, has the three-judge Court acted upon the joint Motion to Reconvene.

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[1]The documents entitled ORDER AND JUDGMENT and MOTION TO RECONVENE FOR CLARIFICATION OF OPINION are attached as the Appendix to this Motion.

[2]Appellants' Jurisdictional Statement is hereinafter referred to as A.J.S.

ARGUMENT

I. AT NO TIME DID THE THREE-JUDGE COURT ENTER AN INJUNCTION AS REQUIRED BY TITLE 28 U. S. C. § 1253 AS A CONDITION PRECEDENT TO A DIRECT APPEAL TO THE UNITED STATES SUPREME COURT.

Appeal can be taken to the Supreme Court pursuant to 28 U. S. C. § 1253 only where a three-judge court has by order granted or denied an interlocutory or permanent injunction. Rule 65(d) of the Federal Rules of Civil Procedure requires that every order granting an injunction be specific, detailed and set forth the reasons for the issuance.

28 U. S. C. § 1253 is to be strictly construed. *Goldstein v. Cox*, 396 U. S. 471, 478 (1970). Declaratory Judgments do not satisfy the requirements of 28 U. S. C. § 1253. *Mitchell v. Donovan*, 398 U. S. 427, 431 (1970).

This Court was called upon to decide a similar presentation of the issue in *Gunn v. Committee to End the War*, 399 U. S. 383 (1970), where an appeal from the decision of the three-judge court was dismissed for want of jurisdiction. There, the three-judge court failed to enter a specific order granting or denying injunctive relief. In this case neither the Opinion nor the Judgment of the Court below grants specific injunctive relief to the Appellees and no action has ever been taken on the ORDER AND JUDGMENT submitted by Appellees in March, 1973, requesting specific injunctive relief.

In *Gunn*, the three-judge court used vague language, asserting that the plaintiffs were "entitled to . . . injunctive relief." p. 386. Similarly here, the Court below spoke

in declaratory terms such as "Wisconsin should", "the plaintiffs are entitled" and "she is also entitled". (A. J. S. p. 147).

Dismissal for want of jurisdiction is appropriate where, despite the clear pronouncements of this Court, a declaratory judgment has been appealed under 28 U. S. C. § 1253. Compare *Mitchell v. Donovan*, citations omitted, with *Babbitz v. McCann*, 310 F. Supp. 293 (E. D. Wis.), Appeal dismissed 400 U. S. 1 (1970).[3]

Moreover, additional circumstances exist herein which compel dismissal of this appeal for want of jurisdiction. More than six months after the opinion in this action was rendered, Appellees submitted a Memorandum to the three-judge Court detailing numerous examples of non-compliance with the Court's decision on the part of the defendants below. Again, in their Memorandum, Appellees requested that specific demands be made upon Appellants to implement the decision. No action was taken on this request.

The confusion caused by the lack of specific injunctive relief was further evidenced by Appellees' motion, joined by Appellants, entitled MOTION TO RECONVENE FOR CLARIFICATION OF OPINION[4], filed July 18, 1973. The "Notice of Hearing" in use by Appellants at that time is attached as Appendix A to the Motion to Reconvene. Appendix pp. 8-10. It is apparent from the form of the "Notice" that either the Appellants did not understand the

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[3]There is no danger here of the Appellants being deprived of recourse to appellate review. Appellees have made continuing efforts to ensure that specific injunctive relief be issued. Moreover, the Motion to Reconvene is still pending in the three-judge Court as discussed infra.

[4]Hereinafter referred to as Motion to Reconvene.

conclusions of the lower court as to adequate notice or they did not consider themselves enjoined to follow those conclusions. The parties joined in a plea to the Court to remove the difficulties which had arisen from its failure to indicate whether or not specific injunctive relief had been granted. Appendix p. 7. No action has been taken by the lower Court on this motion.

The pending Motion to Reconvene also provides an independent basis for depriving this Court of jurisdiction. In *Utah Citizens Rate Association v. United States*, 192 F. Supp. 12 (D. C. Utah 1960), *aff'd* 365 U. S. 649 (1960), the district court held that a motion interposed prior to docketing deprived the judgment of the finality required for direct appeal to the Supreme Court. Since the Court below has failed to act on the Motion to Reconvene the requisite finality for a direct appeal to this Court is lacking.

The failure to issue an order granting specific injunctive relief and the continuing pendency of a motion in the Court below command the result that this cause be dismissed for want of jurisdiction.

II. THE APPELLANTS FAIL TO PRESENT ANY SUBSTANTIAL QUESTION BY THIS APPEAL.

A. *The Wisconsin Statutory scheme allowing for the pick-up, detention and commitment of the allegedly mentally ill clearly violates the requirements of the Due Process Clause of the United States Constitution.*

The Wisconsin Statutory scheme provides for pick-up and detention of persons alleged to be mentally ill for a

period of up to 145 days without a hearing; fails to make notice of any proceedings mandatory; fails to require adequate and timely notice; fails to provide a right to counsel and makes appointment of guardian ad litem discretionary; allows for discretionary waiver by the court of a person's right to be present, to be heard and to confront witnesses against him; fails to require notice of jury trial; fails to provide safeguards for the privilege against self-incrimination; fails to provide for exclusion of hearsay evidence; allows permanent commitment to an institution upon a showing of mental illness by a preponderance or greater weight of the credible evidence to a reasonable certainty; and allows for permanent commitment to a closed institution absent a showing that the person is dangerous to self or others and that no less drastic means of commitment are available.

There can no longer be any doubt that the Due Process guarantees of the Fifth Amendment as incorporated into the Fourteenth Amendment to the Constitution apply to persons undergoing involuntary mental commitments. *Specht v. Patterson,* 386 U. S. 605 (1966), *Baxstrom v. Harold,* 383 U. S. 107 (1965). The right to counsel, the privilege against self-incrimination, and the rights to timely and adequate notice, an opportunity to be heard, to cross-examine, to exclusion of hearsay evidence and to a burden of proof beyond a reasonable doubt in mental commitment proceedings and other proceedings where physical liberty of the individual is at stake are so well established that they can no longer be seriously doubted. *Heryford v. Parker,* 396 F. 2d 393 (10th Cir., 1968), *In Re Gault,* 387 U. S. 7 (1967), *Specht v. Patterson, supra.* In fact the only two cases cited by the Appellants in support of their contention

for a lesser standard of proof (A. J. S. p. 16) have no precedential value having been rejected by the Circuit Court of Appeals for the District of Columbia in the case of *In Re John Ballay*, No. 71-2023, decided May 31, 1973. Also see *In Re Winship*, 397 U. S. 358 (1970).

It is axiomatic that where an individual may be deprived of a significant fundamental personal right, be it in property or his own liberty, that that individual must be given an opportunity to be heard prior to being so deprived.

> "Without this guarantee that one may not be deprived of his rights, neither liberty nor property, without due process of law, the State's monopoly over techniques for binding conflict resolution could hardly be said to be acceptable under our scheme of things." *Boddie v. Connecticut*, 401 U. S. 371, 375 (1971).

This Court has further stated that the only exception to this prior right to be heard is "within the limits of practicability." *Mullane v. Central Hanover Bank & Trust Company*, 339 U. S. 313, 318 (1950).

The transcript, Exhibit 16 in the Court file, clearly shows that the psychiatric evaluations of Appellee comprised a combined total of approximately twenty minutes yet Appelleee was detained from October 29, 1971, through November 15, 1971, before any hearing was scheduled. The record is silent as to any compeling interest on the part of Appellants for holding Appellee in custody for 15 days merely to obtain two ten minute psychiatric interviews.

Appellants contention that the availability to the Appellee of pre-hearing habeas corpus relief cures the Con-

stitutional defects of the Wisconsin Statutory scheme finds no basis in this Court's rulings. In *Stanley v. Illinois*, 405 U. S. 645, 647 (1972), it was held that:

> "This court has not, however, embraced the general proposition that a wrong may be done if it can be undone."

Furthermore, the Wisconsin Habeas Corpus Statute, WIS. STAT. § 292.01 (A. J. S. p. 9) relied upon by the Appellants specifically provides only for a test of the question of mental illness without providing any opportunity to challenge the legality of the original detention or the need for continued hospitalization in addition to a finding of mental illness. WIS. STAT. § 292.01(2) (A. J. S. p. 9). Pursuit of habeas corpus relief under this statute clearly could not remedy the widespread constitutional defects in the Wisconsin Statutory scheme.

The cases cited by appellants *Logan v. Arafeh*, 346 F. Supp. 1265 (D. C., Conn. 1972), *aff'd* 93 St. Ct. 1556 (1973), and *Fhagen v. Miller*, 306 F. Supp. 634 (S. D., N. Y. 1969), are not applicable. The statutory scheme under attack in those cases contained extensive procedural protections such as the right to counsel and notice of the right to a hearing upon request, among others. *Fhagen v. Miller*, at p. 635, 636. *Logan v. Arafeh*, at p. 1267-1267. None of these protections were afforded Appellee nor are they afforded under the Wisconsin Statutory scheme.

Appellants' contention that a finding of dangerousness is neither statutorily not constitutionally required (A. J. S. p. 12) again raises no substantial question. This Court has already determined that a finding of dangerousness under

the Wisconsin Civil Commitment scheme is required "to justify such a massive curtailment of liberty." *Humphrey v. Cady*, 405 U. S. 504, 509 (1972). Moreover, it is clear that the dangerousness standard and the other procedural requirements mandated by the Court below are essential to a statutory scheme so devoid of constitutional protections that in 1966 Wisconsin ranked fifth among the states in the percent of persons in the population committed to mental hospitals. Opinion, n. 13 (A. J. S. p. 118).

B. *This case was not appropriate for abstention.*

No substantial question is here presented. It is a well established rule that federal district courts have the duty to adjudicate controversies properly before them. *Zwickler v. Koota*, 389 U. S. 241 (1967). The Wisconsin Statutes in question are neither ambiguous nor of recent vintage. *Wisconsin v. Constantineau*, 400 U. S. 433 (1971). Indeed, nowhere have the Appellants asserted that the requisite Due Process protections can be read into the Wisconsin Statutory scheme. The Wisconsin Statutes involved in this case clearly fail to provide Constitutional Due Process protections.

Finally, there was no immediately available state forum where the Constitutional questions which the appellees raised could have been litigated. *State v. Stehlek*, 262 Wis. 642, 56 N. W. 2d 514 (1953). Not until the case of *Just v. Marinette County*, 56 Wis. 2d 7, 201 N. W. 2d 761, decided October 31, 1972, did the Wisconsin Supreme Court admonish the lower state courts to treat questions of the constitutionality of State laws.

C. *Appellants' challenge to the appropriateness of the class does not present a substantial question.*

The lower Court, on the basis of the definition of the class, after argument and briefs on the issue, determined this to be an appropriate class action. The case of *Goldberg v. Kelly,* 397 U. S. 254 (1970) presented a strikingly similar situation to this Court. There the class was potentially comprised of over 1,000,000 persons who either had been or could be terminated from public assistance payments without a prior hearing. The alleged factual basis for such terminations could vary immensely. Nevertheless, each person in the class was subject to the same constitutionally impermissible procedure for such a cut-off. The same is true in this case. Each member of the class was subject to a statutory procedure barren of even the most minimal Constitutional Due Process protections. Each member of the class had been denied or was imminently subject to denial of the right to counsel, an opportunity to be heard and a proper standard upon which commitment could constitutionally be based. As in *Goldberg,* class relief was clearly appropriate here.

There are additional reasons which support the appropriateness of affirmance in this case.

There is no disagreement among the circuit courts which have addressed themselves to the issue here presented. *Heryford v. Parker.* 396 F. 2d 393 (10th Cir., 1968); *In Re John Ballay,* Case. No. 71-2023 (D. C. Cir., 1973); *Lake v. Cameron,* 364 F. 2d 657 (D. C. Cir., 1966). All of the circuit courts cited above, when presented with one or more of the issues submitted to the three-judge Court in this case, have rendered a decision consistent with the decision below.

The Appellants have failed to present, at any stage of the proceedings, any evidence which could be deemed to be supportive of the Wisconsin Statutory scheme. Furthermore, the substantial differentiations which exist in the various statutory schemes of the fifty states could not be adequately resolved on the stipulated record in this case, dealing only with the unconstitutionality of the Wisconsin Statutes.

CONCLUSION

Appellees respectfully submit that the grounds upon which this cause depends are so unsubstantial as not to need further argument and the requisite jurisdictional elements are lacking, therefore appellees respectfully move the court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the three-judge District Court for the Eastern District of Wisconsin.

Respectfully submitted,

THOMAS E. DIXON
ROBERT H. BLONDIS
Counsel for Appellees

Dated at Milwaukee, Wisconsin this ..... day of ....., 1973

.....
THOMAS E. DIXON

.....
ROBERT H. BLONDIS

APPENDIX

APPENDIX
1

ORDER AND JUDGMENT

(Formal Parts Omitted)

This cause having come on to be heard on motion of plaintiffs for a summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and the Court having considered the pleadings in the action, the stipulation of facts of the parties dated March 30, 1972, and having heard oral argument and having found that there is no genuine issue of fact to be submitted to the trial court, and having concluded that plaintiffs are entitled to judgment as a matter of law with costs, disbursements and attorney's fees, it is hereby

ORDERED, that plaintiffs' motion for a summary judgment is granted in the following respects:

1. The Wisconsin civil commitment procedure, WIS. STATS. Ch. 51, is declared unconstitutional insofar as it:

A. Fails to require effective and timely notice of the "charges" under which a person is sought to be detained;

B. Fails to require adequate notice of all rights including the right to a jury trial;

C. Permits detention longer than 48 hours without a hearing on probable cause;

D. Permits detention longer than two weeks without a full hearing on the necessity for commitment;

E. Permits commitment based upon a hearing in which the person charged with mental illness is not represented by adversary counsel, at which hearsay evidence is ad-

mitted, and in which psychiatric evidence is presented without the patient having been given the benefit of the privilege against self-incrimination;

F. Permits commitment without proof beyond a reasonable doubt that the patient is both "mentally ill" and dangerous; and

G. Fails to require those persons seeking the commitment of others to consider less restrictive alternatives to commitment.

2. The order adjudging the named plaintiff, Alberta Lessard, mentally ill and in need of commitment is declared unconstitutional and invalid as to the bases of both mental illness and dangerousness.

3. The unnamed plaintiffs, all persons eighteen years of age or older who are being held involuntarily pursuant to any emergency, temporary or permanent commitment provision of the Wisconsin involuntary mental commitment statute are declared to be unconstitutionally held.

4. The defendants are hereby enjoined from further detention of, or use of the present statutory commitment scheme against Alberta Lessard and all of the unnamed plaintiffs.

5. The defendants are enjoined from administering drugs to persons prior to their commitment or probable cause hearing which would lessen the ability of the person to comprehend the proceedings and participate in their defense, and it is further

ORDERED, ADJUDGED AND DECREED that the defendants are further enjoined to provide in all future civil commitment proceedings:

6. Notice of the date, time and place of the scheduled hearing, notice of the basis for detention, notice of the right to jury trial and the standard upon which he may be detained, notice of the names of examining physicians and all other persons who may testify in favor of continued detention and the substance of their proposed testimony, all to be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded.

7. A probable cause hearing within 48 hours of the original detention.

8. Transcripts or recordings of the interviews by the examining physicians to the attorney representing the person subject to the proceedings, sufficiently in advance of the hearing to afford a reasonable opportunity to prepare.

9. A full hearing within two weeks of the original detention wherein the person charged with mental illness is represented by adversary counsel, the rules of evidence, including hearsay rules, are properly applied, the findings and standard of proof necessary for an order of commitment are "mental illness and imminent dangerousness to self and others beyond a reasonable doubt" and those attempting to commit the person must show the court that less restrictive alternatives than commitment to an institution are unavailable before commitment may ensue.

10. Notice to the person detained of his privilege against self-incrimination before requesting or taking statements or interviews with said person.

11. The opportunity to consult with counsel, retained or appointed, before requests are made that the person sign a voluntary commitment form, and it is further

ORDERED, ADJUDGED AND DECREED that pursuant to proper implementation of the opinion, orders and judgment in this case the named and unnamed plaintiffs in the case are entitled to and the defendants are enjoined to provide:

12. Reasonable access by the plaintiffs, their attorneys, and those acting in their behalf to the grounds and facilities of all mental hospitals and institutions and to persons within those institutions who may be affected by the dictates of this opinion, order and judgment.

13. Access by members of the class or their attorneys when authorized by a member of the class to all institutional, hospital and court records pertaining to past or present commitment under the invalid Wisconsin procedure.

14. The right to expungement of the above-mentioned records upon written demand of a member of the class or his attorney when so authorized by a member of the class, and it is further

ORDERED, ADJUDGED AND DECREED that final judgment in favor of the plaintiffs and against the defendants is hereby granted and ordered entered as the judgment in this action pursuant to all of the above orders and decrees.

Dated: .....

.....
The Honorable John W. Reynolds
U. S. District Judge

.....
The Honorable Myron L. Gordon
U. S. District Judge

.....
The Honorable Robert A. Sprecher
U. S. Circuit Judge

MOTION TO RECONVENE FOR CLARIFICATION OF OPINION

(Formal Parts Omitted)

Now come the plaintiffs, joined herein by the defendants, in the above-entitled action and shows to the Court:

1. That by the opinion issued in this action and dated the 18th day of October, 1972, it was decided in part, at 349 F. Supp. 1078 at p. 1103, that the Wisconsin civil commitment procedure is unconstitutional insofar as it:

a. Fails to require effective and timely notice of the "charges" under which a person is sought to be detained;

b. Fails to require adequate notice of all rights, including the right to jury trial;

c. Permits commitment without proof beyond a reasonable doubt that the patient is both "mentally ill" and dangerous; and

d. Fails to require those seeking commitment to consider less restrictive alternatives.

2. That since the issuance of the decision disagreement ehas arisen between plaintiffs and defendants concerning the interpretation of the opinion in the following respects:

a. Plaintiffs are of the opinion that before a person can be involuntarily committed, written notice must be served on the person not less than five (5) days prior to the proceedings, and further that this notice must include, among other things, the factual bases under which the person is being detained and the substance of the proposed testimony of witnesses who will testify in favor of commitment. *Lessard et al. vs. Schmidt, et al.*, 349 F. Supp. at p. 1092. Defendants' disagreement with this stance is evidenced by the actual notice being utilized in present commitment hearings. A copy of said notice is attached hereto as Appendix A.

b. Plaintiffs are of the opinion that the notice used in Milwaukee County and attached hereto as Appendix A does not meet the minimum requirements as to notification of all rights as set out in the opinion, 349 F. Supp. at 1103.

c. Plaintiffs are of the opinion that the decision mandates that a person must be found to be both mentally ill and dangerous beyond a reasonable doubt before a judge is empowered to order treatment as specifically stated by this Court, 349 F. Supp. at p. 1103.

Defendants are of the opinion that the decision empowers a Court to commit person if it finds that the person is unable to make a rational decision as to

his/her need for hospitalization as a result of his/her mental illness. See 349 F. Supp. at 1094.

d. Plaintiffs are of the opinion that the decision dictates that all available alternatives to institutionalization be thoroughly investigated and found to be either unavailable or unsuitable before commitment to a mental institution may occur and that proof beyond a reasonable doubt of the unavailability or unsuitability of less drastic alternatives must appear on the record in each case. See 349 F. Supp. at p. 1096.

Defendants are of the opinion that requiring them to bear the burden of proving that less restrictive alternatives are unsuitable or unavailable is impracticable within the time limits set down by the decision.

e. Plaintiffs are of the opinion that the decision mandates a finding of dangerousness based, in part, upon proof beyond a reasonable doubt of a recent dangerous overt act, threat or attempt. See 349 F. Supp. at p. 1093.

Defendants are of the opinion that the above findings are not required in order to prove dangerousness but rather can be based on past history, failure or refusal to take medicines, or psychiatric testimony.

3. The disagreements listed above have resulted in substantial and critical confusion in those state courts attempting to apply the *Lessard* decision to commitment hearings. Further, that because said confusion concerns points of law which are of utmost importance to the effect and implementation of the *Lessard* decision, it is crucial that said points of law be clarified by this Court.

WHEREFORE, plaintiffs, joined by defendants, move the Court to reconvene for the purposes of hearing arguments of counsel and considering evidence which will aid the Court in clarifying the above-mentioned points of law.

ROBERT H. BLONDIS
Attorney for Plaintiffs

THOMAS E. DIXON
Attorney for Plaintiffs

GEORGE E. RICE
Attorney for Defendants

WARD L. JOHNSON
Attorney for Defendants

Dated July 3, 1973

APPENDIX A

NOTICE OF HEARING

(Formal Parts Omitted)

Please take notice that application has been made for an examination into the mental condition of the above named Rose Mathews and that such application by Dr. George Currier, acting medical director of the Milwaukee County Mental Health Center, will be heard, pursuant to the opinion in *Lessard v. Schmidt, et al.*, 71-C-602, U. S. Dist. Ct. E. Wis., before The Honorable Wm. L. Shaughnessy, East Bldg., Soc. Serv. Office, M.C.M.H.C., S.D. in the City of Wauwatosa, in the County of Milwaukee and State of Wisconsin, on the 28 day of April, A.D. 1973, at 1:30 o'clock in the afternoon.

In order to prepare for sadi hearing, you are hereby informed of the following facts and legal requirements:

1. Counsel has been appointed to represent you in these proceedings. You have the right to retain counsel of your own choice at your own expense.

2. You have a right to a Jury Trial which jury panel will be compared of 6 (six) persons if you so desire and submit a request either by yourself or your attorney.

3. The Court or Jury, if you so demand, will be required to make a finding that you are mentally ill beyond a reasonable doubt and you are either dangerous to yourself or others beyond a reasonable doubt and/or unable to make a responsible decision with respect to hospitalization in order to justfy any commitment to a mental hospital.

4. The names of the examining physicians appointed by theCourt to examine you and who will testify as to their findings are as follows:

Dr. V. Giannattasio

Dr. T. A. Harris

5. The above named physicians propose to testify that they have observed you in the recent past or have information tending to show the existence of mental illness on your part. Your attorney will be allowed to cross-examine them if he so desires.

Dated at Milwaukee, Wisconsin this 11 day of April A.D., 1973.

To: Rose Mathews—in person
Mrs. Mabel Schaeffer—by mail

By the Court,

W. J. SHAUGHNESSY
County Judge, Probate Division